

LATHAM & WATKINS

ATTORNEYS AT LAW

1001 PENNSYLVANIA AVE., N.W.

SUITE 1300

WASHINGTON, D.C. 20004-2505

TELEPHONE (202) 637-2200

FAX (202) 637-2201

PAUL R. WATKINS (1899 - 1973)
DANA LATHAM (1898 - 1974)

CHICAGO OFFICE

SEARS TOWER, SUITE 5800

CHICAGO, ILLINOIS 60606

PHONE (312) 676-7700 FAX 993-9767

HONG KONG OFFICE

23RD FLOOR

STANDARD CHARTERED BANK BUILDING

4 DES VOEUX ROAD CENTRAL HONG KONG

PHONE + 852-2905-6400 FAX 2905-6940

LONDON OFFICE

ONE ANGEL COURT

LONDON EC2R 7HU ENGLAND

PHONE + 44-171-374 4444 FAX 374 4460

LOS ANGELES OFFICE

633 WEST FIFTH STREET, SUITE 4000

LOS ANGELES, CALIFORNIA 90071-2007

PHONE (213) 485-1234 FAX 891-8763

MOSCOW OFFICE

ULITSA GASHEKA 7, 9TH FLOOR

MOSCOW 125047, RUSSIA

PHONE + 7-095 785-1234 FAX 785-1235

NEW JERSEY OFFICE

ONE NEWARK CENTER, 16TH FLOOR

NEWARK, NEW JERSEY 07101-3174

PHONE (973) 639-1234 FAX 639-7298

NEW YORK OFFICE

885 THIRD AVENUE, SUITE 1000

NEW YORK, NEW YORK 10022-4802

PHONE (212) 906-1200 FAX 751-4864

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE, SUITE 2000

COSTA MESA, CALIFORNIA 92626-1925

PHONE (714) 540-1235 FAX 755-6290

SAN DIEGO OFFICE

701 'B' STREET, SUITE 2100

SAN DIEGO, CALIFORNIA 92101-8197

PHONE (619) 236-1234 FAX 696-7419

SAN FRANCISCO OFFICE

505 MONTGOMERY STREET, SUITE 1900

SAN FRANCISCO, CALIFORNIA 94111-2562

PHONE (415) 391-0600 FAX 395-8095

SILICON VALLEY OFFICE

75 WILLOW ROAD

MENLO PARK, CALIFORNIA 94025-3656

PHONE (650) 328-4600 FAX 463-2600

SINGAPORE OFFICE

20 CECIL STREET, #25-02/03/04

THE EXCHANGE, SINGAPORE 049705

PHONE + 65-536-1161 FAX 536-1171

TOKYO OFFICE

INFINI AKASAKA, 8-7-15, AKASAKA, MINATO-K

TOKYO 107, JAPAN

PHONE +813-3423-3970 FAX 3423-3971

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Re: Comments of CenturyTel, Inc. regarding *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45

Dear Ms. Salas:

Enclosed please find an original and 4 copies of the Comments of CenturyTel, Inc., in the above-referenced proceeding.

Please stamp and return to me the copy provided for this purpose. If you have any questions regarding this matter, please call me at (202) 637-2225.

Sincerely,



Richard R. Cameron

cc: Sheryl Todd (with diskette)
International Transcription Services, Inc. (with diskette)

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Before the
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Washington, D.C. 20554

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DEC 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Federal-State Joint Board on)
Universal Service:)

CC Docket No. 96-45

Promoting Deployment and Subscribership)
in Unserved and Underserved Areas,)
Including Tribal and Insular Areas)

COMMENTS OF CENTURYTEL, INC.

CENTURYTEL, INC.
John F. Jones
Director of Government Relations
100 Century Park Drive
Monroe, Louisiana 71203
(318) 388-9000

Karen Brinkmann
Richard R. Cameron
William S. Carnell
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 637-2200
Attorneys for CENTURYTEL, INC.

December 17, 1999

SUMMARY

The Commission's proposed reading of its authority to designate eligible telecommunications carriers (ETCs) under section 214(e)(6) is overly broad and cannot be sustained. Section 214(e)(6) fills only a small gap of authority left by the Telecommunications Act of 1996. Rather than fostering new and complex jurisdictional battles, the Commission should take this opportunity to clarify that the Communications Act does not divest state commissions of the authority to designate wireless telecommunications carriers as ETCs.

State commission interpretations of their own governing statutes are not reviewable by the Commission. Only after the state commission or court has found a lack of jurisdiction over a given carrier may the Commission make the ETC designation itself. Contrary interpretation of the statute could threaten the Commission's overall universal service policy goals, if ETCs certified at the state and the federal level are held to differing coverage, service quality and other standards. Particularly in the case of an area served by a rural carrier, state commissions are best positioned make the required public interest determination, taking into account local conditions such as population density, cost and quality of service, economic conditions, and other factors. To minimize customer confusion, decreases in service quality, procedural inefficiency, and substantive inconsistency, therefore, in cases where it has jurisdiction, the Commission should coordinate closely with the relevant state commission to ensure that state-level policies are given full effect.

The Commission should focus its efforts on critical, unanswered questions of federal policy that have profound implications for universal service in rural areas. As wireless and other technologies proliferate, the Commission should continue to refine its support mechanisms for all carriers, to provide for deaveraging of support in rural areas, and to ensure that the support mechanisms are appropriate for all emerging technologies. In addition, the Commission should settle lingering uncertainty surrounding the federal package of supported services, including standards for voice-grade access, minimum local usage, and others.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service:)	CC Docket No. 96-45
)	
Promoting Deployment and Subscribership in)	
Unserved and Underserved Areas, Including)	
Tribal and Insular Areas)	

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following comments in connection with the above-captioned Further Notice of Proposed Rulemaking ("Notice") released September 3, 1999.¹

I. INTRODUCTION

CenturyTel, headquartered in Monroe, Louisiana, is a leader in providing integrated communications services to rural markets. CenturyTel provides a variety of high quality communications services to more than 2 million customers in rural communities in 21 states, including local exchange, wireless cellular telephone service, personal communications services (PCS), long distance, security, data, and Internet access services. CenturyTel is a leader in providing a full range of communications and information services to rural America. CenturyTel's rural exchanges provide local exchange service to 1.3 million access lines, but

¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204 (rel. September 3, 1999). This notice was published in the *Federal Register* on Sept. 30, 1999, *see* 64 F.R. 52738 (Sept. 30, 1999).

approximately half of its exchanges have fewer than 1,000 access lines each. Very few of its exchanges have greater than 10,000 access lines. CenturyTel has certified to the Commission that all of its operating companies meet the statutory definition of a "rural telephone company" contained in section 3 of the Communications Act of 1934, as amended (Communications Act).²

The Commission's Notice seeks comment on a variety of universal service initiatives to promote subscribership in unserved and under-served areas, including tribal lands. CenturyTel generally applauds the Commission's efforts to bring service to unserved and under-served areas, and believes the Commission is correct in concluding that any carrier should be able to seek eligible telecommunications carrier (ETC) status, regardless of its network technology, if the carrier provides the services supported by federal mechanisms and otherwise meets the requirements of section 214(e)(1) and any additional requirements imposed by the state where it operates.

CenturyTel's comments address a limited set of proposals made in the Commission's Notice that potentially could frustrate the Commission's overall universal service goals. The Commission essentially proposes in paragraphs 73-82 of the Notice to parlay the limited authority conferred by section 214(e)(6) into a general assertion of jurisdiction to confer ETC status on *all* non-wireline carriers. A carrier must be designated as an ETC to receive federal high cost universal service support. In general, state commissions are responsible for designating ETCs within their borders under section 214(e)(2). In cases where state commissions lack jurisdictional authority to do so, section 214(e)(6) gives the Commission authority to designate a carrier as an ETC directly. The Notice, however, seeks comment on

² 47 U.S.C. § 153(37).

"whether the Commission, rather than state commissions, has the jurisdiction to designate terrestrial wireless or satellite carriers" as ETCs.³

In these comments, CenturyTel asserts that section 214(e)(6) cannot be read to confer such power on the Commission, and that the Commission's arrogation of such broad authority is legally unsound. The Commission also should recognize that, where state commissions possess authority over such matters, they are in a better position than the Commission to evaluate local conditions relevant to the ETC designation process and the qualifications of any particular applicant to meet local requirements.

The FCC should also continue to be sensitive to the challenges of providing local exchange service in local markets. In this regard, CenturyTel continues to support the Commission's 1997 conclusion that a carrier seeking ETC certification in an area already served by a rural telephone company must commit to serve the rural telephone company's entire study area, unless the state and federal commissions together establish a different service area.⁴ Where rural customers are concerned, Congress determined that competition is not the sole, or even the pre-eminent goal of public policy where rural customers are concerned. Section 254(b)(1) and (3) of the Act specify affordability and comparability of rates as primary goals of federal universal service policy, particularly for rural, insular, and high cost areas. Entry by multiple ETCs into rural markets directly implicates the issues of affordability and comparability because of the existing structure of implicit support that have yet to be resolved for incumbent rural carriers.

Therefore, the Commission should, as a matter of policy, defer to the states in this area whenever possible.⁵ Even in cases where a state commission lacks authority, the

³ Notice at para. 77.

⁴ 47 C.F.R. § 54.207(b-c).

⁵ "The 1996 Act adopted as central goals promoting competition, preserving and advancing universal service, and encouraging infrastructure investment. Congress entrusted State commissions with substantial discretion

Commission should coordinate with the state commission, because the public interest will be best served by giving local policies full effect.

II. THE COMMISSION HAS NO GENERAL JURISDICTION TO DESIGNATE NON-WIRELINE CARRIERS AS ETCs

The Commission's proposed assertion of blanket authority to determine the ETC status of CMRS carriers would effect a sweeping and fundamental jurisdictional shift away from state commissions, which currently have the primary role in designating ETCs within their borders. To justify this change, the Commission relies on a "technical amendment"⁶ to the Telecommunications Act of 1996, which grants the Commission power to designate as ETCs those carriers "that [are] not subject to the jurisdiction of a State Commission."⁷

This proposed interpretation is inconsistent with the plain language of Section 332, which specifically saves from preemption significant state jurisdiction over CMRS carriers. Nor would it be reasonable to interpret the 1997 amendment to shift broad authority over ETC designation from the states to the federal government. In short, section 214(e)(6) cannot be interpreted to support Commission jurisdiction over the ETC status of CMRS carriers outside of tribal lands or other areas where states cannot or do not exert jurisdiction.⁸

Instead of fostering complex new jurisdictional battles, the Commission should resolve in this proceeding that states may – and indeed, where appropriate, must – designate wireless carriers as ETCs. This step would simplify ETC certification proceedings before state commissions, and lend certainty to the environment in which state commissions evaluate

to implement those policies to fit the facts and circumstances of their local markets. As the development of competitive local markets continues, the role of state commissions in preserving and advancing universal service will become increasingly important.” Rural Task Force, *Rural Task Force Mission and Purpose*, White Paper 1, Sept. 1999, at 29-30 (available at: www.wutc.wa.gov/rtf).

⁶ 143 Cong. Rec. H10,807 (daily ed. Nov. 13, 1997) (statement of Mr. Bliley).

⁷ 47 U.S.C. § 214(e)(6).

⁸ Cf. *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984) (agency interpretation upheld unless contrary to the statutory text, or unreasonable).

wireless carrier applications for ETC status. Specifically, the Commission should clarify that federal law does not deny state commissions jurisdiction over the wireless ETC designation process, and that the Commission will make ETC designations only outside of state territories, or where a state has explicitly and of its own volition renounced jurisdiction to make such designations.

A. The Commission's Proposed Interpretation Of The Act Cannot Be Sustained

As enacted in the Telecommunications Act of 1996 (1996 Act), section 214(e) of the Communications Act sets up the framework by which state commissions generally have general authority within their borders to designate carriers as ETCs. Section 214(e) makes plain that the Commission has ETC certification authority only where the states lack jurisdiction, providing that a "state commission shall . . . designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier" and that, "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."⁹ Section 214(e)(1) sets the basic ETC requirements, although state commissions also have authority to specify what (if any) service requirements will be mandated in addition to the federal minimums.¹⁰

This general state authority over ETC designation was modified in 1997 to provide that where "a common carrier . . . is not subject to the jurisdiction of a State commission," the FCC may designate such a carrier directly as an ETC.¹¹ Although section 214(e)(6), therefore, gives the Commission limited power to designate ETCs, this technical amendment cannot be read as the broad grant of authority the Commission now proposes. Under

⁹ 47 U.S.C. § 214(e)(2).

¹⁰ See 47 U.S.C. § 214(e)(1); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5th Cir. 1999).

section 332, for example, states plainly do *not* lack jurisdiction over CMRS providers within their respective territories. In a series of Commission decisions, the Commission has upheld state authority to regulate CMRS carriers, including the authority to hear complaints against CMRS carriers, require registration, and monitor the structure, conduct, and performance of CMRS carriers within the state.¹² While Section 332 preempts state authority over CMRS rates and entry, it specifically preserves State Commission authority over “other terms and conditions” of CMRS service. In addition, in cases where CMRS services are a substitute for land line telephone exchange service, section 332 specifically subjects CMRS carriers to “requirements imposed by a State commission on all telecommunications providers necessary to ensure the universal availability of telecommunications service at affordable rates.”¹³ In finding that a CMRS carrier provides the complete package of federally-supported services, and otherwise meets the requirements to be designated an ETC, the state commission necessarily makes this “substitutability” finding as well. Accordingly, CMRS providers within a state are very much subject to that state's jurisdiction over universal service requirements, including the eligibility criteria and designation procedures for ETC status.¹⁴ Indeed, at least one state commission has

¹¹ 47 U.S.C. § 214(e)(6).

¹² *E.g.*, *Petition of Arizona Corporation Commission to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services*, Report and Order and Order on Reconsideration, 10 FCC Rcd 7824 (1995); *Petition of the People of the State of California and the Public Utilities Commission of the State of California to Retain Regulatory Authority Over Intrastate Cellular Service Rates*, Report and Order, 10 FCC Rcd 7486 (1995); *Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana*, Report and Order, 10 FCC Rcd 7898 (1995); *Petition on Behalf of the State of Hawaii, Public Utility Commission, for Authority to Extend Its Rate Regulation of Commercial Mobile Radio Services in the State of Hawaii*, Report and Order, 10 FCC Rcd 7872 (1995); *Petition of New York State Public Service Commission to Extend Rate Regulation*, Report and Order, 10 FCC Rcd 8187 (1995); *Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services*, Report and Order, 10 FCC Rcd 7842 (1995).

¹³ 47 U.S.C. § 332(c)(3)(A).

¹⁴ Indeed, the Commission has previously recognized that wireless carriers may be designated by states as eligible telecommunications carriers. *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8858 (1997).

explicitly considered this question and found that Section 332 did not prevent it from exercising its jurisdiction under Section 214(e)(2).¹⁵

To be sure, there may be situations where wireless or other carriers are not subject to any state jurisdiction. As may be the case in tribal lands, there may be areas in which no state is *able* to exert jurisdiction. In addition, state law may circumscribe the state commission's jurisdiction over CMRS carriers.¹⁶ Within a state that has not relinquished jurisdiction over wireless carriers or the ETC designation process, however, there is no authority for the Commission to intervene. Section 214(e) cannot be read to divest the states of any jurisdiction they possess. Indeed, state commissions have in some cases already exercised their authority to designate CMRS providers as ETCs,¹⁷ or to deny ETC designation.¹⁸ Plainly, there is no general void of state jurisdiction over CMRS providers requiring the Commission to take control of the designation process.

It would be unreasonable to interpret section 214(e)(6) to achieve the dramatic shift of regulatory authority that the Commission proposes. Congress in the 1996 Act granted primary authority over ETC designation to the state commissions and the brief legislative history of the 1997 amendment demonstrates that Congress intended only a "finetuning" to "correct a

¹⁵ *Minnesota Cellular Corp. Petition for Designation as an Eligible Telecommunications Carrier*, P-5695/M-98-1285 (Minnesota Public Utilities Comm'n 1999).

¹⁶ For example, the Wyoming Public Utilities Commission interpreted state law to prohibit it from exerting jurisdiction to grant ETC status to a CMRS carrier. *See Amended Application of WWC Holdings for Authority to be Designated as an Eligible Telecommunications Carrier, Order Granting Motion to Dismiss*, ¶ 15, Docket No. 70042-TA-98-1 (Public Service Comm'n of Wyoming, 1999) ("It is the Commission's conclusion that Wyoming law does not provide this Commission with statutory authority to consider this amended application . . . for designation as an eligible telecommunications carrier").

¹⁷ *See, e.g., Yelm Telephone Co. et al., Order Designating Eligible Telecommunications Carriers*, YT 970333-54, 56 (Washington Utilities and Transportation Comm'n, 1997); *Minnesota Cellular Corp. Petition for Designation as an Eligible Telecommunications Carrier*, P-5695/M-98-1285 (Minnesota Public Utilities Comm'n 1999).

¹⁸ *See, e.g., Filing by GCC License Corp. for Designation as an Eligible Telecommunications Carrier*, TC98-146 (Public Utilities Comm'n of South Dakota, 1999).

technical glitch" that went undetected in the original text.¹⁹ There were no hearings and little debate, not the sort of fanfare that would accompany a wholesale shift in authority over the yearly apportionment of hundreds of millions of dollars of universal service subsidies. Under the 1996 Act, a tribally-owned carrier providing service on tribal lands "would have no way of becoming designated as an eligible telecommunications carrier" because such carriers are not subject to state jurisdiction.²⁰ Congress closed this loophole, but at the same time made plain that the Amendment was not intended to "expand or restrict the existing jurisdiction of State commissions over any common carrier or provider."²¹ Congress did not intend to replace state authority to grant ETC status, but rather to fill a void where states lack such authority under existing state law.

B. The Commission Should Not Strive To Interpret The Act So As To Divest States of Authority Over the ETC Designation Process

State commissions are in a better position than the federal government to assess and respond to local conditions. Critical factors such as population density, cost of service, economic conditions, quality of service, customer needs and geographic conditions must be closely reviewed and are best understood by state commissions that are familiar with their service territories.

Congress recognized this state-level advantage and afforded a considerable role to the state commissions to set standards for universal service. While the Commission has authority to establish the minimum list of federally-supported services, the states may add to the

¹⁹ 143 Cong. Rec. H10,808 (daily ed. Nov. 13, 1997) (statements of Reps. Markey and Hayworth).

²⁰ *Id.* (statement of Rep. Markey).

²¹ *Id.* at H10,808-09 (colloquy of Reps. Thune and Bliley).

ETC requirements according to local priorities.²² The Commission should avoid second-guessing that judgment by granting ETC designations that compete with those of the states.

Making ETCs serving the same geographic area subject to two wholly different authorities could lead to substantive inconsistency and procedural inefficiency. The states' ability to impose service requirements beyond the federal minimums could lead to a situation where a federally-certified (wireless) ETC and a state-certified (wireline) ETC could be subject to different requirements for receiving support for the same area. In addition to the illogic of such a result, it could cause customer confusion and undermine the goals of the federal program.

The Commission has defined the basic universal service package in an initial federal attempt to provide national uniformity, but there are many implementation questions left to state commissions, including rigorous service quality standards that state commissions routinely apply to wireline ETCs. The Commission would create customer confusion if federally-certified ETCs were not held to the same service quality standards but nevertheless could (indeed, are required to) advertise the availability of a complete package of all the supported services akin to the state-designated ETCs. Particularly in the under-served areas eligible for high-cost support, relatively unsophisticated consumers are unlikely to know that one service or service provider could potentially have lower voice quality, coverage, reliability or data-transmission capabilities, or a differing amount of flat-rated local usage included in the monthly charge, than another.

Deference to state commission authority is particularly important in the case of designation of additional ETCs in the service area of a rural incumbent local exchange carrier (ILEC). Both Sections 214(e)(2) and (e)(6) require a public interest finding before the

²² See, e.g., *Texas Office of Public Utility Counsel*, 183 F.3d at 418 (upholding "discretion a state commission retains to impose eligibility standards").

designation of additional ETCs within the service territory of a rural telephone company is permitted. Because federal high cost support is intended to maintain affordable and reasonably comparable local rates,²³ and must be used only for the “provision, maintenance, and upgrading of facilities and services for which the support is intended,” the impact of ETC certification is primarily felt at the state level. Accordingly, state commissions are best positioned to make the required public interest determination, after considering all local conditions, and their authority and expertise in this area should not lightly be superseded through an aggressive and overreaching interpretation of section 214(e)(6).

Recognizing the additional importance of local conditions in the case of an area served by a rural telephone company, section 214(e)(5) provides that, in the case of an area served by a rural telephone company, an ETC’s service area must be the rural telephone company’s entire study area, unless the state and federal commissions, acting in concert, establish a different service area.²⁴ Federal certification of an ETC without adequate state involvement risks eliminating the benefits of the states’ uniquely-advantageous position in evaluating local factors relevant to the service area designation.

C. The Commission Cannot And Should Not Attempt To Provide Appellate Review Of State Jurisdictional Determinations.

The Commission and the states require a workable and predictable process for settling the proper locus of jurisdiction to designate a carrier as an ETC, which CenturyTel submits cannot exist both at the state and federal level. In essence, in the Notice, the Commission has proposed to review state determinations of their own jurisdiction. The Notice proposes that a carrier seeking Commission ETC designation "on the basis of other jurisdictional arguments"

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999)

²⁴ 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

should first "consult with" the state commission and, apparently, even in cases where the state commission asserts jurisdiction, the carrier may "apply to the Commission for designation," flagrantly disregarding the state's jurisdictional determination.²⁵

The Commission cites no source of authority for such general review of state jurisdictional determinations – indeed there is none. Such a process, whereby the carrier can, in effect, choose the forum before which it seeks ETC certification is clearly outside the ambit of section 214(e). Except for its limited authority under section 253 to preempt state action that constitutes a barrier to entry, the Commission has no expertise or power to interpret state legislative grants of authority to state commissions. Challenges to state authority should not be taken to the Commission, but rather to the appropriate state court of review.²⁶ Rather than seeking to provide review of the jurisdictional determinations of state commissions, the Commission should facilitate state-level processes. Specifically, to the extent that state jurisdiction depends on determinations concerning the Commission's own jurisdiction under the Communications Act, the Commission should take this opportunity to clarify its limited role under section 214(e), so that state commissions need only decide issues of particularized state law. The Commission should then defer to state determinations except when they violate section 253.

III. IN CASES WHERE THE COMMISSION PROPERLY HAS JURISDICTION TO GRANT ETC STATUS, IT MUST STILL RESOLVE SEVERAL CRITICAL ISSUES TO ENSURE THAT IT GIVES FULL EFFECT TO LOCAL UNIVERSAL SERVICE POLICIES AND DOES NOT UNDERMINE FEDERAL GOALS.

The Commission should not single-mindedly pursue its goal to create multiple, competing ETCs at the expense of its overall universal service policies – especially in rural and

²⁵ Notice at para. 82.

²⁶ Once it is clear under state law that a state lacks jurisdiction, the Commission may, of course, exercise authority pursuant to section 214(e)(6). A state exercise of jurisdiction over the ETC designation process may be subject to challenge before the Commission under section 253 if the state exercise constitutes a barrier to entry.

high cost markets. While CenturyTel believes that CMRS services and other technologies can be used to provide the supported services, the Commission must first resolve several issues of critical importance to avoid threatening the integrity of the universal service support mechanisms and to send correct investment signals. CenturyTel believes that a willingness to provide high-quality services at reasonably comparable and affordable rates to all customers within a rural study area is more critical to its customers at this time than a choice of providers.

A. The Commission Must Continue to Refine Support Mechanisms to Ensure that They Are Appropriate for Emerging Technologies.

Cost characteristics of networks built using different transmission technologies differ greatly, but support is currently computed based on *wireline* technology only. Uniform universal service support amounts are unlikely to send equivalent investment and entry signals to ETCs relying on differing technologies to provide service.

To address this threat, the Commission must complete two critical pieces of its review of universal service support mechanisms. First, as the Commission recently recognized, wireless technologies “are likely to become more important over time in providing universal service.”²⁷ Accordingly, the Commission announced its intention to explore how technological changes can be accounted for in the cost model currently used to estimate non-rural carriers forward-looking costs.²⁸ This issue will not be easily resolved for rural or non-rural carriers, but it represents a crucial piece of the universal service equation. Widespread certification of ETCs with differing network technologies and differing service packages and quality under the current support mechanism will ultimately cause the quality of universal service to deteriorate in rural areas as high-quality service providers are forced from the market.

²⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Report and Order, FCC 99-304 (rel. Nov. 2, 1999), at para. 12, n.34.

²⁸ *Id.*

While CenturyTel cautions the Commission that reductions in universal service support for wireline ETCs based on support calculations for other technologies could threaten the ability of wireline ETCs to provide universal service, it is equally clear that support based on a wireline model, or currently in the case of rural carriers, embedded loop costs, will provide correct entry and investment signals to a CMRS carrier only by chance. Section 254 and the Commission's rule require universal service support mechanisms to be competitively-neutral and the Commission has determined that the purpose of federal support is to enable affordable and reasonably comparable local rates among states. Existing levels of portable universal service support will not be in the correct amount to achieve these goals. The Commission has recognized these and a host of other issues raised by the need to design a universal service support mechanism that simultaneously supports differing technologies.

Second, the Commission should complete its evaluation of universal service support mechanisms for rural carriers, including deaveraging of universal service support for these carriers. Indeed, deaveraging of support payments is a prerequisite to successful designation of multiple ETCs in rural areas. Otherwise, already troublesome cream-skimming could worsen as non-ILEC ETCs choose to enter only in areas where high-cost support creates a relative windfall.

B. Inconsistent Federal and State Universal Service Standards Could Undermine the Goals of the Act.

In addition to significant issues surrounding the introduction of new technologies, the Commission must resolve lingering questions surrounding the definition of universal service itself, including questions of voice grade access and minimum local usage. These issues have a substantial impact on the feasibility and cost of providing the supported services using either wireless or wireline technology. ETC designations made while resolving these issues on an *ad*

hoc basis potentially could greatly expand the demand for universal service support, without providing consumers with any real benefit or meaningful choice of providers. Particularly with the rural cap in place, the effect would be to drain vitally-needed dollars away from rural wireline carriers.

Any inconsistency between certification standards based on service type could exacerbate this disparity. If the Commission holds wireless carriers to a lower standard than wireline carriers for example, this could have the effect of encouraging investment in wireless service, which would divert universal service dollars away from wireline. Thus, contrary to its overall universal service goals, the Commission would encourage the development of low-quality service at the expense of high-quality service. Consequently, while the provider may prosper under such an arrangement, the customer would be the overall loser.

For example, the Commission currently requires ETCs to provide voice grade access to the network using a minimum bandwidth between 300 and 3000Hz.²⁹ Various parties have urged this minimum to be raised in order to provide greater data transmission capability,³⁰ or lowered in order to make compliance easier for rural carriers.³¹ The Commission must therefore lend finality to its determination as to the bandwidth necessary to meet the supported service standard.

At least some wireless technologies may be unsuited to either the current or proposed standard. While some fixed wireless local loop applications may meet the voice grade access standard, as claimed by Western Wireless, it is not clear that conventional mobile

²⁹ *Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration in CC Docket No. 96-45 and Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5328-29 (1997) (Fourth Order on Reconsideration).*

³⁰ *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ex Parte Presentation of the Rural Utilities Service (Letter from Christopher A. McLean, Deputy Administrator, Rural Utilities Service filed Jan. 30, 1998).*

³¹ Indeed, the Commission granted such petitions in the *Fourth Order on Reconsideration*, 13 FCC Rcd at 5329.

applications generally do. Wireline ETCs are routinely required to provide the required bandwidth and the Commission should not routinely waive this standard for wireless carriers seeking ETC status.

Similarly, the Commission has not resolved issues of minimum local usage. The Commission has recognized that one component of universal service is a minimum amount of flat-rated local usage but has not yet specified what that amount should be. CMRS carriers often have rate plans that, at the low-end, provide little or no local usage. Wireless providers could structure rate plans to maximize support payments by wining many customers with “free” monthly access while minimizing the cost of service by discouraging its use through extremely high per-minute usage charges. While to date, CMRS carriers have generally sought certification for flat-rated wireless local loop service, other carriers may not. The Commission should resolve this critical issue to ensure that only service offerings that meet the definition of universal service are supported. Otherwise, universal service goals could be threatened or frustrated by the proliferation of CMRS ETCs, all demanding support for lines that are not used in ways that advance the Commission’s universal service goals.

IV. CONCLUSION

The designation of eligible telecommunications carriers has broad ramifications on the support system for universal service, especially in rural markets. For sound policy reasons, Congress delegated to the state commissions the authority to designate ETCs within their borders. The Commission should not overstep its authority to designate ETC status. To the extent that it makes ETC designations, the Commission should carefully coordinate its policies with those of the affected states to avoid any inconsistency with state-imposed standards, and should work quickly to resolve outstanding questions surrounding the impact of new entrants and technologies on support mechanisms.

Respectfully submitted,
CENTURYTEL, INC.



Karen Brinkmann
Richard R. Cameron
William S. Carnell
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 637-2200
Attorneys for CENTURYTEL, INC.

John F. Jones
Director of Government Relations
CENTURYTEL, INC.
100 Century Park Drive
Monroe, Louisiana 71203
(318) 388-9000

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